

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 34 of 1986

Date of decision: 24-12-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

GHANSHYAM KHANDSARI UDYOG

Versus

STATE OF GUJARAT

Appearance:

Mr. Uday Joshi for M/S TRIVEDI & GUPTA for Petitioners
Mr. H. L. Jani for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 24/12/96

ORAL JUDGEMENT

Heard the learned counsel for the parties.

The petitioner had applied for grant of

permission to manufacture Khandsari under the provisions of the Gujarat Gur and Khandsari (Regulation of Production) Order, 1977. That application was dismissed by respondent No.2 under order dated 17th March, 1985. The petitioner carried the matter in appeal before respondent No.1. The appeal was also dismissed under order dated 5th November, 1985. Hence this special civil application.

2. On 7-1-1986 notice was issued and interim order to maintain statusquo was also made. On 13th March, interim relief in terms of para 15(D) was granted. Para 15(D) reads as under:

"Pending the hearing and final disposal of the present petition, Your Lordships shall be pleased to issue an order of injunction restraining the respondents, their officers, agents and servants from taking any action of whatsoever nature against the petitioners, either by way of seizure or confiscation or stopping manufacturing activities on the ground that the petitioners have not been issued requisite licence."

The counsel for the parties do not dispute that the licence has to be granted annually. The petitioner had applied for grant of licence on 13th May, 1981. It is not the case of the petitioner that licence has been granted. On the contrary the petitioner was not granted licence in the present case. When asked by the court, the counsel for the petitioner was unable to give any reply how the petitioner started the factory when the licence has not been granted. However, the counsel for the petitioner admits that the petitioner started the factory. So it is a case where the petitioner has taken the law in his own hands and without any licence being granted in its favour started the factory. The petitioner started the factory without licence is also apparent, as otherwise there was no necessity of protecting the petitioner by this court by passing the order to maintain status quo on 7-1-1986 and then order of interim relief in terms of para 15(D). The fact is that for the last more than 15 years the petitioner is manufacturing Khandsari without any licence in the first phase illegally and in the second phase under the protective order of this Court.

3. Taking into consideration the fact that this court has protected the petitioner, now it may be considered to be a case where the petitioner has a licence, but only because of the interim relief. But it cannot be taken to be a licence dehors of the Orders/

Rules and a case where the provision of renewal etc., are not applicable. The petitioner cannot claim immunity from the applicability of the provisions of the Order /rules which provides for renewal and passing of appropriate order therefor by the competent authority. The interest of justice will be met in case this petition is disposed of with the direction that the petitioner shall apply for grant/renewal of licence to the competent authority within a period of one month from today and the Competent Authority shall decide the application afresh. However, while dealing with the application the Competent Authority will not taking into consideration order impugned in this special civil application. The application shall be decided on merits. Till the application of the petitioner is decided the interim relief granted earlier by this court shall continue to operate. In case the petitioner fails to file application as directed above within the stipulated period, the special civil application shall stand dismissed and the interim relief shall stand automatically vacated. The petition stands disposed of accordingly. Rule discharged. No order as to costs.

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